

# Attachment A

# EXHIBIT B

1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NEW YORK - CIVIL TERM - PART 37  
4 -----X

5 PATROLMEN'S BENEVOLENT ASSOCIATION OF  
6 THE CITY OF NEW YORK, INC.  
7

8 Plaintiff,  
9  
10 -against-

11 BILL DeBLASIO, CITY OF NEW YORK, JAMES P. O'NEILL  
12 and NEW YORK CITY POLICE DEPARTMENT,  
13

14 Defendants.  
15 -----X

16 Index # 153231/2018

17 Proceedings

18 60 Centre Street  
19 New York, New York  
20 June 5, 2018  
21

22 B E F O R E:

23 HONORABLE ARTHUR F. ENGORON,  
24 Justice.

25 A P P E A R A N C E S:

26 KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP  
1633 Broadway  
New York, New York 10019  
BY: MICHAEL J. BOWE, ESQ.  
ALEXANDER SIMKIN, ESQ.  
Attorneys for Plaintiff

NEW YORK CITY LAW DEPARTMENT  
100 Church Street  
New York, New York 10007  
BY: MAXWELL LEIGHTON, ESQ.  
Attorney for Defendants

(Continued next page.)

1

## 2 A P P E A R A N C E S: (continued)

3

4 CLEARY GOTTLIEB STEEN & HAMILTON, LLP  
5 One Liberty Plaza  
6 New York, New York 10006  
7 BY: BEN SHARTSIS, ESQ.  
8 Attorneys for Legal Aid Society

9

10 LEGAL AID SOCIETY  
11 199 Water Street  
12 New York, New York 10038  
13 BY: CYNTHIA CONTI-COOK, ESQ.  
14 Attorney for Legal Aid Society

15

16

17

18

19

20

21

22

23

24

25

26

DEBORAH A. ROTHROCK, RPR  
Official Court Reporter

1

-Proceedings-

2

THE COURT: On the record.

3

We are here on the case of Patrolmen's Benevolent  
Association of The City of New York, Inc. against Bill  
DeBlasio In His Official Capacity as Mayor of The City of  
New York, et cetera; Index Number 153231/2008.

7

This is an Article 78 Proceeding -- or purports to  
be and Legal Aid Society would like to intervene.

9

I would ask them to present their position on the  
record at this time.

11

MR. SHARTSIS: Certainly.

12

Your Honor, Legal Aid Society has a substantial  
interest in this case and qualifies as an interested party.

14

The standards for intervention, as you are aware,  
are highly discretionary. We believe the Court should  
exercise its discretion to intervene in this case.

17

This topic, of course, is a tremendous public  
interest as to the ability of the People of New York to know  
how and if officers are being disciplined for potential  
misconduct and Legal Aid, in particular, has an interest in  
this; as we have litigated a number of cases involving  
ensuring that the courts are fully briefed on and correctly  
interpret Section 50A. And we have an interest in the City  
publishing information about officers being permitted to do  
so. And, of course, this information may be relevant  
ultimately in the representation of Legal Aid clients.

3

1

-Proceedings-

2

3

4

On that basis, given the broad standard for intervention, we believe Legal Aid should be permitted to intervene.

5

6

7

8

9

10

11

12

13

It is also worth noting that Legal Aid is advancing its positions and defending the City's actions on the grounds that the City has not, at this point, advanced; that is, that Legal Aid is advocating for essentially a broader rejection of the PBA's petition. And, furthermore, has substantively defended the records that the City proposes to release as are not being subject to Section 50A and the position not taken by the City. On that basis, Legal Aid is requesting to intervene.

14

THE COURT: Okay.

15

I think it was described as a limited opposition?

16

MR. BOWE: Well, Judge, clearly they don't qualify as interveners. It is something more than having an interest in a litigation. You have to have a legally cognizable right.

20

21

22

23

The parties that have rights here are the police officers who are the protected class under the Civil Rights Statute and the City is seeking to release those records and is the subject of this lawsuit.

24

25

26

So, what you did not hear from counsel, very simply, was, that we have a legally cognizable right. They are not a protected class under 50, they are not the

5

1 -Proceedings-

2                   custodian of the records, they have no role in this  
3                   controversy at all other than they have an ancillary  
4                   interest in its outcome.

Quite clearly in the cases that we cite, the First  
Department cases we have cited, that means they are not  
--they don't qualify for intervention. We have no  
objection to them putting in an Amicus brief and being  
heard, but they don't qualify as a party to this action.

10 THE COURT: And --

11 MR. SHARTSIS: May I be heard on the standard?

12 THE COURT: Yes.

19 In fact, the case THE MATTER OF THE NEW YORK  
20 LAWYERS ASSOCIATION V BLOOMBERG, is a case very similar to  
21 this one where a legal association wanting to intervene was  
22 permitted to intervene because the outcome of the case could  
23 have significant bearing on its clients. This case is  
24 inline with that.

25 The standard is broad and discretionary.

26 THE COURT: Okay. The motion is granted.

1

**-Proceedings-**

2

I read your papers which you both summarized very well.

4

Intervention is a matter of discretion, or at least some discretion. I always say I like discretion to do what I think is right.

7

I think the whole case is very important, as probably reflected in the fact that there are a lot of people out in the gallery.

10

Legal Aid does represent criminal defendants who I think have some interest in this all.

12

There was a debate in the papers whether the standard is do you need a legally cognizable right, or do you need an interest -- I forgot exactly how interest is defined. I certainly think that Legal Aid has an interest here and you are hereby granted to intervene as a party respondent.

18

MR. SHARTSIS: Thank you.

19

THE COURT: Okay.

20

Now, let's move onto the Article 78 Proceeding.

21

I had issued a TRO. Did anything happen between then and now that changes anything and we could go into the more substantive argument; petitioner?

24

MR. BOWE: The only thing that is relevant, Judge, is referred to in the papers, is that Justice Hagler had dismissed a Section 50 body cam case on precisely the

1

-Proceedings-

2

issue -- the only issue the City raises here there's no  
private right of action; therefore, no Article 78 relief is  
available. We immediately appealed that and took that to  
the First Department.

6

7

8

9

10

The First Department not only stayed the order, but  
it enjoined the City from releasing any of that footage,  
which we think is a clear review to the patently inaccurate  
characterization of cases that deal with damages and private  
rights of action as opposed to Article 78.

11

12

Other than that, I don't think there has been any  
new developments.

13

14

15

THE COURT: I am vagally aware of news reports. I  
think Buzz Feed had released certain records or something;  
if that had any effect, that is fine.

16

17

18

19

20

21

22

23

MR. BOWE: It is a different issue, your Honor, in  
terms of the fact that somehow certain records got leaked,  
illegally, we are dealing with that under a contract. As to  
the issue here, it doesn't; except that it would be an  
example of one of the cases that they cite as support for  
their position where stuff was leaked and someone brought a  
claim for damages under the private right of action, that is  
the Carpenter case, so that is not this case.

24

THE COURT: Okay.

25

26

I could see why, even if were some records or  
purported records were released, that wouldn't moot your

1 -Proceedings-

2 request here?

3 MR. BOWE: No, because it was leaked -- it was  
4 illegal.

5                   What they are proposing is a regularly ongoing role  
6                   in the production of the summaries.

7 THE COURT: All right.

8 Let's address the issue head on whether there is a  
9 private right of action here. And perhaps the more  
10 complicated question, if there isn't a private right of  
11 action, can the petitioner get Article 78 relief?

12 Now, you are City's attorney?

13 MR. LEIGHTON: Right. Maxwell Leighton for  
14 respondents.

15 THE COURT: Let's address your motion to dismiss.

16 MR. LEIGHTON: Thank you, your Honor.

17 We cross moved to dismiss as a threshold matter.

18 We reserved our right to answer in the event that  
19 cross-motion is denied, we believe that.

20 As to the merits, we don't speak to that in our  
21 cross-motion. I know Legal Aid Society did answer and did  
22 speak to the position as to the summaries.

23 As a threshold matter, I think it is very well  
24 established that there's no private right of action to sue  
25 for a violation of civil rights. That is clear holdings of  
26 the First, Second, Third and maybe even the Fourth

1 -Proceedings-

2 Department.

3 The First, Second and Third Department have all  
4 held that police officers, or their unions, may not sue to  
5 enjoin the publication of records. They are certainly  
6 shielded by 50A, the case that was dispositive to Justice  
7 Hagler and we believe similarly should be dispositive here.

8 The Third Department case, MATTER OF DOE VERSUS  
9 CITY OF SCHENECTADY 84 A.D.3d 1455 (2011.)

10 In that case two police officers and an association  
11 represents police officers brought a Hybrid Article 78 and  
12 declaratory judgment action seeking an order to permanently  
13 enjoin the respondents, the City of Schenectady and the  
14 Police Department, from conducting public hearings in  
15 connection with police disciplinary proceedings.

16 Petitioners claimed, in that case, that the  
17 proposed hearing would violate 50A and, thus, pursuant to  
18 Article 78, the decision to hold such hearing was arbitrary  
19 and capricious and was in violation of the law, the law  
20 being 50A. That is precisely what the PBA has argued here.

21 While the word "enjoined" and "injunction" may not  
22 appear within their petition, and while they don't claim to  
23 be seeking injunctive relief, that is what they are doing.

24 They are saying that the release or publication of  
25 summaries --we will talk about summaries a little bit  
26 later -- that that violates 50A and, therefore, they seek

1

-Proceedings-

2

Article 78.

3

The Third Department dismissed in Doe, the petitioner claimed first noted that no filed right of action existed for claimed violations of 50A and stated that because injunctive relief is granted only to protect the legal right, the petitioners had no such legal right to protect; for this reason alone the petitioner's complaint should have been dismissed.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

10

Now, I know already --I will not put words in their mouths, and I know they will have some debate, opposing counsel, as to that precise language, the words should have been dismissed to that extent, which they believe somehow modifies or narrows the nature of that holding. Justice Hagler disagreed. He believed that the City, the respondent believed here, that that was a determination that was correct in seeking to prevent a municipality from doing something that is precisely what is at issue here. And they are seeking to do it founded on a claim at its heart based on Civil Rights Law 50A, yes, through a vehicle 78, but the Third Department determined that that was not a legally cognizable claim even under an Article 78 vehicle.

They did appeal. And we did go to the First Department where Justice Richter, on an emergency stay application, set a schedule for briefing on a full motion for preliminary injunction. That motion is fully submitted

1

-Proceedings-

2

as of today.

3

She also issued an interim stay, that the first time -- for the first time enjoined the respondents from releasing body worn camera footage.

6

7

8

9

10

11

12

So I don't know that there's much that you could draw at this stage from what Justice Richter decided, perhaps there's more that you could draw from when a panel, a motion panel makes, what I believe will be an expedited decision on the PBA's motion for a TRO Preliminary Injunction pending their appeal of Justice Hagler's decision.

13

14

15

16

17

18

Nevertheless, putting aside even Justice Hagler's decision, which is described in the transcript which we have provided to the Court accompanying our cross-motion to dismiss, that decision itself is based on authority from as I noted the Third Department; also based on authority from the First Department.

19

20

21

The First Department in a case called REALE VERSUS KIEPPER, R-E-A-L-E versus K-I-E-P-P-E-R, 204 A.D.2d 72, (1994 case).

22

23

24

25

The First Department reversed the preliminary injunction that was issued by a trial court, which had enjoined specifically the City from imposing discipline of this Transit Authority police officer.

26

The First Department said and I'll quote, if you

1

-Proceedings-

2

will humor me:

3

"Regardless of whether the proposed postings would violate the provisions of Civil Rights Law Section 50A, the Legislator has not created either by an expressed or implied bifurcated right of action on the part of the police officers for claimed violations of Civil Rights Law 50A.

8

Since injunctive relief is granted only to protect the legal rights, petitioners, therefore, were not entitled to this relief based on cause of action under this statute."

11

That holding from the First Department in 1994 is again echoed, again, by the First Department in a case from 2006, MATTER OF 35 NEW YORK CITY POLICE OFFICERS VERSUS CITY OF NEW YORK, 34 A.D.3d 392. That case, the First Department reversed the granting of preliminary injunction because 50A does not create a private right of action of police officers and that concerned as well the release of certain records.

18

Not to leave the Second Department out. The Second Department also issued a decision on this case POUGHKEEPSIE POLICE BENEVOLENT ASSOCIATION VERSUS CITY OF POUGHKEEPSIE, 184 A.D.2d 501 (1992). There, the Poughkeepsie PBA claimed the City of Poughkeepsie had released its summary of an internal investigation of instances of police misconduct and, therefore, sought to withdraw the enjoining of the City from doing so in the future. The Second Department denied the petitioner, or plaintiff, I don't know that it really

12

**-Proceedings-**

2 matters, frankly, but denied the preliminary injunction.

To that point it doesn't matter, where you have the three departments, again, nothing from the Fourth Department that I have seen, all echoing each other and saying on point when it comes to this precise factual scenario, that there's not a private right action even under, as set forth in the Doe case from the Third Department, even under Article 78 Proceedings, we believe that there's clearly a basis for dismissal as a threshold question without approaching the merits, which respondents will do. We will certainly file an answer if, in the event that it is necessary, but we don't believe it is necessary.

14                   We think that Justice Hagler was correct and we  
15                   think that the First Department will agree; and with that,  
16                   your Honor, likewise, should dismiss this case for  
17                   substantially the same reasons.

18 THE COURT: All right. Thank you.

19 MR. BOWE: Judge, I think counsel said it is not  
20 what you could draw from the First Department stay.

21                   What you could draw from the First Department stay  
22                   is that this is the precise argument Judge Richter disagreed  
23                   with and she disagreed with it for obvious reasons.

24 If he's right then tens of thousands of cases that  
25 have been filed in New York for probably 75 years were  
26 improperly filed. Article 78 Proceedings are filed all the

1 -Proceedings-

2 time against judges. They are filed in all sorts of  
3 scenarios and there's never a private right of action.  
4 There's no private right of action for a convicted prisoner  
5 who has a problem with a sentence. There's no private right  
6 of action.

7 It is not a private right of action to bring an  
8 Article 78 against a judge for exceeding his jurisdiction or  
9 authority. There's no private right of action written  
10 anywhere to go down and file an Article 78 Proceeding in a  
11 family court saying that family court is overstepping its  
12 bounds of jurisdiction in Supreme.

13 Obviously there's an infinite number of scenario  
14 where we deal with Article 78 Proceedings all the time where  
15 they never have a private right of action, either explicitly  
16 under the statute, or under the very separate analysis of  
17 whether or not you imply a private right of action.

18                   And what is absolutely mischaracterized in all of  
19                   the cases that the City depends on -- and they have one  
20                   defense to this case that they have raised -- and it is this  
21                   one, that we have no recourse.

22 The last time we were here, Judge, they said you  
23 characterized correctly, their defense was trust us.

24                   Their defense now is different; their defense now  
25                   is too bad.

26 Apparently under their characterization, police

1 -Proceedings-

2 officers of the City of New York, are the only constituency  
3 that has a statutory civil rights protection that they can't  
4 enforce. According to them there is no remedy whatsoever  
5 for any violation of Section 50A for a police officer. That  
6 makes no sense and it is legally wrong.

7 We all know if a government agency, or a judge is  
8 exercising --is acting illegally or beyond their  
9 jurisdiction, Article 78 is available.

10 And what the City's position here is that apples  
11 are bananas and bananas are apples. Private rights of  
12 action are different than administrative review and  
13 mandamus, they have been from the beginning of American  
14 English jurisprudence.

15 Every one of the cases they rely on deal with a  
16 private right of action.

17 The first --and in fact they cite each other all  
18 along the way. So Carpenter is the first case, New York  
19 Court of Appeals. That is like the situation your Honor  
20 raised; personnel records got leaked, police officer sued  
21 the City for damages, that is not Article 78, that is a  
22 private right of action.

23 The Court went through the analysis you go through  
24 to figure out is there, was there, there's no explicit right  
25 of action, should we imply one? Said, no.

26 The next case Simpson, another Court of Appeals

1

-Proceedings-

2

case once again sought damages, not mandamus, private right of action, filed a complaint, not a petition, sought damages.

5

Poughkeepsie once again, filed a complaint to enjoin the release of summaries, not a petition. It wasn't an Article 78 Proceeding. And what does it cite as authority? Simpson and Carpenter, both cases that were clearly private rights of action. You get to react.

10

11

12

13

14

15

16

17

18

The First Department case. Once again, it is ambiguous. We put the petition in there. The petition is, obviously, a hybrid, because it seeks among other things breach of contract. It says a conduct here violates our Collective Bargaining Agreement. It is a hybrid. Those lawyers, for whatever reason, chose not to identify one way or another in particular; but it is obvious that the Court below and the Appellate Division deal with it as a private right of action.

19

20

21

22

23

24

25

Because what they say is, since injunctive relief is granted only to protect a legal right -- which is the code word for a private right of action -- petitioner is not entitled to this relief based on a cause of action under the statute. Citing Carpenter, Simpson, Poughkeepsie, all of which are cases that deal with whether you have a private right of action, not a mandamus issue under Article 78.

26

Then you get to Doe. According to the Court, Doe

1

-Proceedings-

2

is a quote "combined proceeding pursuant to Article 78 and seeking declaratory judgment."

4

Declaratory judgment comes from equitable relief I seek when I have a private right of action. I could seek damages and I could seek equitable relief. It is different from mandamus, which is Article 78 is a successor.

8

It talks about combined declaratory judgment action Article 78, a combined petition and complaint.

10

Now, it cites Reale's language as I just cited to you where it says: No civil rights of injunctive relief based upon a cause of action under the statute.

13

And then it says, for these reasons alone petitioner's complaint should have been dismissed to that extent. So you have to read them together.

16

What it is saying is, there's no cause of action --no right to relief based upon a cause of action under the statute. The petition should have been dismissed to that extent; meaning, obviously, to the extent you're seeking relief based on cause of action under the statute, the petition should have been dismissed. Does it stop? No.

22

Then it goes through the actual Article 78 analysis; to sit there and say, okay, let's see if it is illegal. So this argument, Judge, is a complete red-herring.

26

Like I said, if they are right, then Article 78

17

1

-Proceedings-

2

would almost never be available to anyone; won't be  
available to prisoners, to litigants, to all sorts of people  
who bring Article 78 Proceedings all the time to seek relief  
when the administrative agency is overstepping its bounds.  
Because there has never been an explicit statement in a  
statute that says, if you don't like this you could bring an  
Article 78 Proceeding. That is not the issue.

9

10

11

And when you looks at the analysis from Carpenter  
and Simpson and you compare it to Article 78 cases, it is  
obvious.

12

13

14

15

In Carpenter and Simpson they go through the  
analysis that you go through when you're trying to figure  
out whether there's no explicit right of action there, but,  
perhaps, the Legislature intended it to apply. Right?

16

17

18

There's a whole bunch of steps and a whole bunch of  
analysis that judges do all the time to see if you have a  
private right of action.

19

20

21

The analysis for Article 78 is entirely different  
and very very simple and completely inconsistent with his  
view.

22

23

24

25

The standard on Article 78 is very clear. Article  
78 relief is available with one exception; if the statute  
explicitly and unequivocally makes it clear that judicial  
review is not available.

26

Those are the bananas; he's talking about apples.

18

1

-Proceedings-

2

He doesn't argue here that this statute

3

unequivocally and explicitly says you can't seek Article 78  
review because it doesn't. And, therefore, we don't have a  
private right of action for damages which is why we are not  
suing Buzz Feed and the City for releasing the leak of those  
other records.

8

9

What we do have is the right to come in here and  
force the City to follow the law. If that wasn't the case,  
if his argument is correct, then we have a civil right --the  
police officers of The City of New York are the only  
protected class in New York City that don't have a right to  
enforce the law that protects them and that can't be the  
law.

15

16

17

18

And more importantly, if he's right, then there's  
all sorts of cases that come before the Court seeking relief  
under Article 78 for an abuse of governmental power that  
can't be brought.

19

20

21

22

23

24

The City's position here is that, basically, they  
could do whatever they want, they could violate any law and  
statute they want; and unless it says in the statute that  
someone actually can go get judicial review, they get to act  
with impunity. That is the complete opposite of the  
standard.

25

26

The standard is everyone gets to come to a judge  
when the City is breaking the law unless the statute says

19

1

-Proceedings-

2

they cannot. That is the law. We have a right for review  
and a right for the Court to force the City to comply with  
the statute.

5

The City has raised no other arguments in response  
to our petition.

7

The First Department has made it clear that an  
Article 78 Proceeding is supposed to be a summary  
proceeding. It is not supposed to be a proceeding you bring  
a motion, then you ask for an answer and you prolong it.

11

We are right on the law on this issue, they have  
raised no other defense to the petition so the petition  
should be granted a permanent mandamus should be imposed;  
or, alternatively, Judge, the preliminary relief should be  
entered and if people are going to deal with answers, we  
will deal with that later.

17

THE COURT: Well now you've intervened, would you  
like to speak Legal Aid?

19

MR. SHARTSIS: Certainly, your Honor.

20

I think Legal Aid's position may help clarify the  
dispute that is going on over the procedure here.

22

In our view the case law is certainly uniform in  
saying that police officers cannot prevent the City from  
releasing information at their discretion.

25

I think it makes sense to focus not as much on the  
procedural ins and outs of Article 78, but on Section 50A.

20

1

-Proceedings-

2

The real issue is that Section 50A simply does not  
countless any restrictions on the City's conduct.

4

It is undisputed in the City's briefing and Legal  
Aid's briefing that Section 50A was passed for a specific  
purpose.

7

A few years before FOIL was passed, and there was a  
common practice that civil litigants and criminal defendants  
could just FOIL request of an officer's personnel file and  
rifle through all documents. The Legislature saw that  
problem and they decided to put a stop to it. They saw a  
window was open and they decided they wanted to close the  
window. No one disputes that that was the purpose of  
Section 50A.

15

PBA's position is not that they closed the window  
but that they boarded up the entire building and prohibited  
anyone from going in there without a Court Order and that is  
not the statute that the Legislature passed.

19

This question of whether there's standing to  
enforce, or whether there is a standing under this, the  
issue is that what Section 50A does, it gives the state the  
right to resist requests by civil litigants or criminal  
defendants. And it would give the PBA or officers the right  
to intervene in a proceeding to compel the state to produce  
records.

26

As the First Department has held, as all the case

21

## 1 -Proceedings-

2 law that has considered the matter has held, Section 50 does  
3 not bind the activities of a governmental agency acting in  
4 its official capacity, which is precisely what the City is  
5 doing here. If the City wants to publish the summaries it  
6 can. If it wanted to include the officer's name in the  
7 summary it could. Section 50A simply does not restrict  
8 that.

9 In that sense, the PBA does not have standing to  
10 bring this claim under Section 50A, on the same sense that  
11 they could not bring the claim under the traffic law; it  
12 just does not apply to the conduct of the City.

13 If--if the PBA were able to bring such a claim it  
14 would be an incredibly expansive and incredibly restricted  
15 imposition on the City.

16 Section 50A doesn't specifically say anything about  
17 whether things are released to the public. It says they  
18 shall be kept confidential.

19 If the police department --if the PBA could bring  
20 an Article 78 claim any time it didn't like what the City  
21 was doing, it could attempt to restrict almost any internal  
22 use. There's no -- there is part of the statute that says  
23 government can use for official purposes and the courts have  
24 read that to mean the government may do whatever it wants  
25 with the records.

26 If any time any information would be made public,

1 -Proceedings-

2 if there were an officer involved shooting and the City  
3 wanted to comment on it, the PBA would, theoretically, be  
4 able to enjoin that activity and that simply cannot be what  
5 Legislature intended. No one has argued that is what the  
6 Legislature intended.

7 Because this statute was passed for the narrow  
8 purpose of preventing private parties from compelling the  
9 production of government; because all the cases that have  
10 the issues with rights and documents are protected by  
11 Section 50A, those are all in the context of private parties  
12 trying to compel the production of documents by the  
13 government.

14 Section 50A has no impact when the government wants  
15 to release its records. That is not the statute that the  
16 Legislature passed and that is not the statute that the  
17 Court should enjoin; because of that the PBA's claim should  
18 be dismissed on those grounds.

19 And we, of course, have briefed on the merits. We  
20 would be happy to discuss but appreciate it, it would make  
21 sense to defer if the Court wishes.

22 THE COURT: The exact language that they are  
23 referring to, and I'm quoting from Civil Rights Law  
24 Section 50A that says "the records at issue shall be  
25 considered confidential and not subject to inspection or  
26 review."

1

-Proceedings-

2

Your position, as you've articulated it, and as I  
read in the papers, is that this basically means an outsider  
can't force the City to release it but the City can release  
it/them.

6

You're certainly relying on the "not subject to  
inspections or review." But I think it is tough to get  
there "shall be considered confidential."

9

Something that is confidential is confidential, at  
the risk of psychology. But I will not make any final  
ruling on that at this point.

12

Does the City want to respond?

13

MR. LEIGHTON: I just wanted to --

14

THE COURT: Off the record.

15

(Whereupon, an off-the-record discussion was held.)

16

THE COURT: On the record.

17

City, you want to reply?

18

MR. LEIGHTON: Two things I will throw out there:

19

One, the City doesn't go as far as Legal Aid  
Society and we've, in fact, we're sitting together at this  
moment in time on the caption, we actually have litigation  
together.

23

We also made clear in other litigation that our  
position is that 50A is not something that could be ignored  
by the City. Frankly, the fact that those cases exist at  
all somewhat turns on its head. The PBA's contention that

24

1

-Proceedings-

2

the City will ignore the law, release things, has some  
license --said that it has some license to do that.

4

Frankly, the City has denied FOIL requests, FOIL records  
that it believes are protected by 50A and litigating all the  
way up to the Court of Appeals where there's case with the  
New York Civil Liabilities Union.

8

I will echo Legal Aid on a point that they have  
just made; where there's a question of how does the PBA  
propose to enforce this?

11

What is it that they are saying the PBA has and an  
officer has a right to do under 50A, in fact that they could  
go to court. And it seems what they are suggesting that 50A  
contemplates a standalone process where courts may review  
potentially covered records outside the context of pending  
litigation or any other proceeding. 50A does not provide  
for that.

18

The process, as your Honor noted at the outset,  
that gives all interested parties an opportunity to be  
heard.

21

Next, under the statute, determines whether the  
requester has made a quote "clear showing of facts  
sufficient to warrant the judge to request records to  
review."

25

And then third, to review the records in camera  
before making available those records that are quote

25

1

-Proceedings-

2

"relevant and material in the action before the court."

3

There won't be an action before anyone. There's not an underlying disciplinary proceeding involving the officer, there's not a criminal matters, which, frankly, is in large part if you look at the Legislative history, or the origin of 50A to prevent --and my apologies to Legal Aid -- overzealous cross-examination by defense attorney. And that is where it originated and we set forth in length in our papers and I believe Legal Aid does as well. Those cases from the First, Second, Third Department, Court of Appeals that deals point on, head on with 50A and from when did it sprang and that is remarkable.

14

I think what we are dealing with is this unique statute that comes out from the unique set of circumstances. And those circumstances do not include the ability of the PBA to weaponized that statute for use in civil litigation even through Article 78.

19

THE COURT: Preliminarily, I disagree with that point.

21

Because it seems to me that if the records are released, anybody could use them or any defense attorney could use them for zealous cross-examination. So I think we understand, at least the people here, what the purpose of the statute was. It says what it says for one thing. And I think there would be an end run around it if A) could get

26

1

-Proceedings-

2

the records, but then B) could use it for whatever B) wanted  
to use it.

4

But be that as it may, I wanted to address, I think  
the PBA had mentioned in its papers, I'm not sure if they  
have sort of danced around it a bit here, you don't want the  
City to get a second bite of the apple? Your view is they  
moved to dismiss. If the motion to dismiss is denied then  
the petition should be granted?

10

MR. BOWE: That's right, Judge. That is the --

11

THE COURT: If that is right you don't have to say  
anymore.

13

MR. BOWE: Correct.

14

THE COURT: All right.

15

In my experience over the years, and there have  
been --this has come up often. This is what the City does:  
They move to dismiss. If they lose that, they still fight  
on the merits. It seems to me they are entitled to that in  
the normal course of litigation.

20

MR. BOWE: Judge, the difference would be one that  
is disfavored in the First Department.

22

More importantly, what is the defense other than a  
legal defense? And here they have articulated their legal  
defense and it fails as a matter of law.

25

THE COURT: Well, I don't know that they have  
articulated all of their legal defenses. I only know they

**-Proceedings-**

2 moved to dismiss on a single ground --

3 MR. LEIGHTON: A threshold procedural question.

4 We would answer and if necessary, apply any  
5 defenses that are applicable, including the nature of the  
6 statute documents; and whether or not they are in fact  
7 protected by 50A, which is something that we discussed when  
8 we met with your Honor a couple months ago on the TRO  
9 application. So it's not a mystery, I suppose, your Honor,  
10 what our view is as to that.

16 THE COURT: Okay.

17 MR. BOWE: Could I just respond?

18 First of all, the cases are clear, we cite them.  
19 There's the Malloy case (1st Dept. 2008) -- all in our  
20 reply -- this is the police officers's right and the case  
21 make clear the City cannot waive it.

22 Legal Aid's position, essentially, says the police  
23 officer has a statute that protects his civil rights but he  
24 can't actually enforce it and, in fact, the City has the  
25 ability to violate it and waive it on his behalf. That  
26 makes nonsense of the statute and it is contrary to what the

1 -Proceedings-

2 cases say. It is the police officers' rights and cannot be  
3 waived by the City.

4 The argument next is, well, you know, we all know  
5 this relates to criminal trials and limited to criminal  
6 trials, and that is not what this is about. That exact  
7 argument was rejected by the Court of Appeals in the matter  
8 of Gazette versus City of Schenectady where the news  
9 organization wanted the records, there wasn't litigation,  
10 there wasn't prosecution. The news organization wanted  
11 records related to disciplinary investigations with respect  
12 to a bachelor party concerning police officers; and that  
13 exact argument was made.

22 They distinguish the Capital News case, another  
23 similar case where the request was for a single police  
24 officer. They wanted the number of absences that that  
25 police officer had for some period of time. And so that is  
26 neutral. Where they in or out where they working or absent

1

-Proceedings-

2

from work for a one month period of time. That does not  
impune or potentially impune an officer one way or the  
other, it is neutral.

5

The idea that you need to have a litigation, or you  
need to either have threatened or prosecution going forward  
or threatened has simply been rejected. Also has been  
rejected by the First Department in Lugano.

9

And then you get to Section 4 of 50A, which makes  
clear, that there's a subset of people who the City is  
allowed to share it with. If their rights --then why do  
they have that subset? The City could share with whomever  
they want.

14

It is a very limited subset. It is a very limited  
subset of people who are allowed to see it and then only for  
an official purpose, Judge.

17

So a DA can't just call up and say, hey, I would  
like to see that stuff and I could release it. No, if he's  
working on the case he could see it, or the City is given  
the discretion to show it to him; but only within the scope  
of his official duties. We can't release it, can't do  
anything with it. If he doesn't have a need to know, he's  
not entitled to see it.

24

If what they are saying is true they put that in  
there even though it is completely unnecessary. Not only is  
the City allowed to show it to those people for official

30

1

-Proceedings-

2

purposes, the City could show it to the entire world for any reason the City wants. Again, it makes nonsense of the statute.

5

Finally, Judge, the City has admitted --the City's position has always been that it does not have discretion to do this. That it is prohibited from releasing records that are subject of 50A. It is litigating a case in this courtroom where it has taken that position, it has represented that position to Court of Appeals for a pending case where it has said we would like to release this information, the statute prohibits us from doing so, so there needs to either be a Legislative solution or the Court of Appeals will have to impose some judicial exceptions.

15

That is the City's position. That is correct.

16

And, so, as we stand here today, the arguments that Legal Aid makes, are not arguments that find any support in the statute. In fact, they contradict the statute. They don't find any support in Legislative history. They are completely contrary to the Court of Appeals cases that dealt with those precise issues. And they are completely inconsistent with the party that is actually the respondent in this case, which is The City of New York, who has admitted forever and is currently admitting in other courts, that they are restricted from -- if it is under 50 they can't release it.

31

1

-Proceedings-

2

THE COURT: I'm glad you mentioned the phrase  
"Legislative solution." I think it may have to be a  
Legislative solution and I think there moves a foot for a  
Legislative solution according to what I read in the paper.  
But we have gone on for awhile about this.

7

Let me just pose the question, I guess it runs  
through my mind as directly as possible to the City:

9

10

11

12

The motion to dismiss is predicated on the argument  
that there's no private right of action under 50A, which I  
believe certain courts have explicitly held, therefore there  
can't be an Article 78 relief. What can there be?

13

14

15

16

17

18

19

The statute says -- assuming that Legal Aid is  
incorrect that the City could do whatever it wants, which  
even you don't accept and you're the City, if these records  
are confidential and you now say, well, we will release  
them, they are summaries -- but that is an argument for  
another day. I learned in law school where there is a right  
there is a remedy.

20

21

22

If there is a right to keep these records  
confidential, what is the remedy here if not this type of  
proceeding?

23

MR. LEIGHTON: Understood, your Honor.

24

25

26

Anything you learned in law school that had a Latin  
phrase attached to it was all the more profound. Although I  
don't recall the Latin for what you translated.

1

-Proceedings-

2

I think that I will answer your question as directly as I can.

4

I think we are in a difficult situation with a difficult statute that, as you just expressed and Justice Hagler expressed, needs to be amended; the City of New York, the Mayor and Police Commissioner has said as much --

8

THE COURT: Let me jump in one more second.

9

I will echo petitioner's phrase "too bad."

10

I think he liked the fact that last time it was trust us. He likes these two-word phrases.

12

Now his argument is saying you're saying "too bad".

13

Well, the law doesn't like too bad. Sorry for interpreting.

15

Let's hear why the statute says they are confidential but the people who would be affected by the un-confidential dealings about the records can't stop it.

18

MR. LEIGHTON: So counsel for Legal Aid Society noted the origin of the statute and I think that is illustrative and, perhaps, will answer your Honor's question;

22

Which is that, it arose out of a contents in response to FOIL.

24

FOIL necessarily is the view that the actual records of The City of New York should be produced unless there is transparency, that is really the goal, unless

33

1

-Proceedings-

2

there's an exception. And the exception created a couple of  
years after FOIL under 50A was recognizing abuse of FOIL and  
it set out a particularized procedure, right?

5

I'm familiar with the Daily Gazette case, the Court  
of Appeals case where the question is if there's pending  
litigation or actual litigation, the Court of Appeals says  
that is not material under the precise facts of the case  
which again is the FOIL case where a party is seeking to  
release it.

11

Here we have The City of New York, the police  
department, looking to release information; information  
that, as your Honor knows, and if you were to answer, we  
would state fairly clearly is not subject to 50A. But --

15

THE COURT: Why not? Because the summaries have  
been redacted?

17

MR. LEIGHTON: They are not redacted.

18

I could change gears and say that the summaries  
were -- I hesitate to call them summaries because in the  
Longo, First Department, there's a statement as to summaries  
and I'm sure opposing counsel for PBA would quote that at  
length if I gave him the opportunity.

23

24

25

26

These are carefully crafted summaries of the  
outcomes of disciplinary proceedings better be identified,  
do not give any information about the subject information  
that is identifying in nature.

34

1

-Proceedings-

2

THE COURT: I opened the door and you walked  
through it but you should really stick with --

4

MR. LEIGHTON: I will stick with what the First  
Department, Second Department and Third Department have  
said; which is that, there is not a private right of action,  
there is not the ability to enjoin, to prevent a  
municipality from the release of certain materials that it  
holds; that is essentially what First Department says,  
Second Department and Third Department, about records of a  
police department that are in many ways analogous to the  
records that are challenged here.

13

14

15

I would say that here the records, our position,  
they are not subject to 50A, hence the reason that we wish  
to publish them.

16

17

18

19

20

21

22

23

24

25

26

But that to answer your question, this is a very  
specific statute created for a specific purpose. It has  
certainly evolved over the years from FOIL case to FOIL case  
to FOIL case. Daily Gazette said what the Court of Appeals  
has said, how it has been played with at the margins, how  
facts have changed, some of the rulings expanded some of the  
juris prudence. But those cases while they will illustrate  
certainly the Legislative history, some of the bounds of the  
statute, that is not the issue here. Those are FOIL cases  
where there's a request and the City is resisting release.

Here the City wishes to release and the precise

35

1 -Proceedings-

2 question is, can 50A be used not as an exception or an  
3 exception with FOIL but rather as a mechanism for making the  
4 claim that the PBA is seeking to make.

5 The First Department, Second Department and Third  
6 Department have said no.

7 THE COURT: I guess I should give Legal Aid a  
8 chance and then petitioner a chance, and we will take a  
9 quick break and I will tell you what I will do and what I  
10 will not do.

11 MR. SHARTSIS: Quick point, I would like to note,  
12 in a democracy, provided information under the workings of  
13 government and transparency into its system, is an official  
14 purpose of the government. So we think that that language  
15 is certainly broad enough and courts have recognized that  
16 every court that has considered that language has recognized  
17 it is broad enough to permit the government to do what it  
18 wants with it.

19                   Second to your Honor's question and comment  
20                   regarding the specific language "shall that be kept  
21                   confidential."

1

-Proceedings-

2

On top of this, every court that has interpreted  
this, including both the Court of Appeals and the First  
Department under Longo has held that Section 50A possesses  
no restriction on --within the agency's discretion to  
disclose such records with or without identifying details if  
it so chooses; that is Capital Newspapers, Court of Appeals.

8

9

10

11

12

13

14

Thus, the idea that there may be a way under which  
a very specific reading of the text and a very particular  
portrayal of what "shall be kept confidential" means could  
get you to the PBA's position but that is at odds both with  
the Legislative history, the context of how the remainder of  
the description of confidential and the press from both  
Court of Appeals and First Department.

15

16

17

18

Another issue is that the PBA has sort of raised an  
issue of estoppel; that the City has in other cases and has  
taken a particular position and, therefore, the City should  
be bound by that position here.

19

20

21

22

23

First of all we would note that estoppel cannot be  
applied against a governmental agency. And, if it could,  
the City actually spent 40 years publishing information  
about officer's discipline complete with officer's names, it  
only stopped that practice two years ago.

24

25

26

So the idea, to our knowledge, PBA never filed an  
Article 78 during that entire period; so the idea that this  
is some unprecedented complete shift in policy and a new

37

1

-Proceedings-

2

interpretation of rights is not consistent.

3

And, finally, I think I want to address the question of rights and what the rights are. Because we actually don't dispute that Section 50A does give an officer some rights. The way Section 50 is drafted, it gives officers the right to resist having their documents compulsively produced by the government.

9

10

11

It does not give them the right to tell their employers what their employers are allowed to do with their employers' own records.

12

13

14

15

It does let them intervene in all of the cases where this comes up -- all of the cases where officers have been recognized as having a right to intervene has been entitled to joined proceedings.

16

17

18

19

Every single case that suggests officers actually do have a right under Section 50A has been a case where a private party sought to compel the disclosure of records and the officer sought to intervene to present that.

20

21

22

23

24

Certainly we don't dispute that if someone requested records and the City said, whatever, we are not going to impose you, then the officers would have a right to intervene. But where the City has affirmatively said we want to provide records, they do.

25

26

Finally, on the question of what does this exception mean?

38

1 -Proceedings-

2 How could it mean, you know, it must really mean  
3 this small internal question between the DA and if you need  
4 it for a very specific purpose you get it.

5 The exception simply says, the provisions of the  
6 section shall not apply if a government agency requires the  
7 information. And that means that if one government agency  
8 that may have conflicting interests with another government  
9 agency requests the records, the agency can't deny on the  
10 grounds of Section of 50A.

11 So even if the government does have the right to do  
12 whatever it wants with the record, there is a significant  
13 clarification created by that exception and, indeed, that  
14 exception, as it has been interpreted by the Courts  
15 reaffirms the fact that the government could do whatever it  
16 wants with the records, Subparagraph 4, without violating  
17 the section.

18 MR. BOWE: He just made the case, Judge.

19 He said that, okay, so up until this moment it has  
20 been --we have no ability to get reviewed. Well, now we do.

21 He limits it in some way not evidence to anything.

22                    Apparently if the City is indifferent to a request  
23                    and the City is not doing anything, then we get to intervene  
24                    to force the City to comply with Section 50A; apparently, to  
25                    him, if the City is violating 50A we don't.

26 We either do or don't.

1

-Proceedings-

2

Everyone knows if the City-- the governmental agency is acting beyond its authority in Article 78, review is available; no one has addressed the standard, no one has disputed the standard, the standard is unless the statute explicitly and unequivocally says otherwise; it doesn't here, therefore, Article 78 review is available.

8

9

10

11

12

13

14

15

16

And, in fact, there have been cases in the First Department, FEERICK V SAFI, 297 A.D.2d 212. The First Department reversed the dismissal of the Article 78 by a police officer and granted the petition challenging the police department's actions under 50A. If the police department has unfettered discretion to do whatever it wants, then that First Department case is wrong, it is not the law. No governmental agency has unfettered discretion to do anything.

17

There's also CROW V KELLY (sic), same result.

18

19

20

21

22

23

24

25

26

And so there were a lot of arguments on the substance that are not raised in an answer from him or otherwise. The only thing before the Court right now is a motion to dismiss with respect to whether or not we have any ability to get any relief, plainly we do. That is exactly --this is exactly the argument they offered to Justice Hagler. Justice Hagler agreed with it. The Second Department, the First Department disagreed, stayed the order and enjoined them --enjoined them from releasing that.

1

-Proceedings-

2

So were you to adopt their position now, we would  
be up there making the same exact argument.

4

There's an injunction from this Appellate Court,  
which recognizing implicitly our right to be heard. And I  
think that is the probably the most compelling fact you have  
to consider right now.

8

THE COURT: Okay.

9

According to the court clock, which is more or less  
accurate, it is 4:03. Let's take a ten-minute break, as I  
said and I will come back and tell you what I am doing and  
not doing.

13

(Pausing.)

14

(Recess taken. )

15

THE COURT: On the record.

16

A frequent legal or, in essence, philosophical  
issue that judges and lawyers face is, honor the letter or  
the spirit of the statute, the contract, whatever. I'm  
aware of the Legislative history of this statute to the  
extent that it was put in the briefs, and there was that  
particular focus on harassment and cross-examination of  
police officers. On the other hand the statute says what it  
says.

24

It doesn't say and this only applies where a  
zealous defense lawyer wants to cross-examine a police  
officer.

**-Proceedings-**

In general, just for the record, I tend to be very strong on spirit rather than letters; but when the letter is clear, you can't just ignore it.

In any event, I will take the City's motion to dismiss under submission.

Frankly, I think I would most likely deny it, but I have not had the chance to read all the cases upon which the City is relying.

I will continue the TRO, of course, I will try to issue a decision within a few weeks at most; that is the story.

As I assume everyone realizes, sitting around the table, the motion to dismiss is denied. The City can, if it wanted to, put in an answer, we could do a whole briefing schedule and go from there. But you will hear from me soon.

MR. BOWE: Thank you, your Honor.

MR. LEIGHTON: Thank you, your Honor.

MR. SHARTSIS: Thank you, your Honor.

THE COURT: The motion to intervene is granted and I will write up what they call a gray sheet stating that.

(Whereupon, the proceedings concluded.)

★ ★ ★

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

DEBORAH A. ROTHROCK, RPR  
Official Court Reporter

<b>A</b>	<b>adopt</b> (1) 41:2 <b>advanced</b> (1) 4:7 <b>advancing</b> (1) 4:5 <b>advocating</b> (1) 4:8 <b>affected</b> (1) 33:16 <b>affirmatively</b> (1) 38:23 <b>again</b> (8) 12:12,12:13:4;16:2, 5,10;31:3;34:9 <b>against</b> (4) 3:4;14:2,8;37:20 <b>agency</b> (10) 15:7;18:5;22:3; 37:20;39:6,7,9,9;40:3, 15 <b>agency's</b> (1) 37:5 <b>ago</b> (2) 28:8;37:23 <b>agree</b> (1) 13:15 <b>agreed</b> (1) 40:24 <b>Agreement</b> (1) 16:14 <b>Aid</b> (20) 3:8,12,20,26;4:3,5, 8,12;6:10,15;8:21; 20:18;24:19;25:8; 26:7,10;31:17;32:13; 33:18;36:7 <b>Aid's</b> (3) 20:20;21:5;28:22 <b>allowed</b> (4) 30:11,15,26;38:10 <b>almost</b> (2) 18:2;22:21 <b>alone</b> (2) 10:8;17:13 <b>along</b> (1) 15:18 <b>alternatively</b> (1) 20:14 <b>Although</b> (1) 32:25 <b>always</b> (2) 6:5;31:6 <b>ambiguous</b> (1) 16:11 <b>amended</b> (1) 33:6 <b>American</b> (1) 15:13 <b>Amicus</b> (1) 5:8 <b>among</b> (1) 16:12	<b>analogous</b> (1) 35:11 <b>analysis</b> (7) 14:16;15:23;17:23; 18:9,13,17,19 <b>ancillary</b> (1) 5:3 <b>anymore</b> (1) 27:12 <b>apologies</b> (1) 26:7 <b>Apparently</b> (3) 14:26;39:22,24 <b>appeal</b> (2) 10:23;11:11 <b>appealed</b> (1) 7:4 <b>Appeals</b> (15) 15:19,26;25:6; 26:11;29:7,14;31:10, 14,20;34:6,7;35:19; 37:3,7,14 <b>appear</b> (1) 9:22 <b>Appellate</b> (2) 16:17;41:4 <b>apple</b> (1) 27:7 <b>apples</b> (3) 15:10,11;18:26 <b>applicable</b> (1) 28:5 <b>application</b> (2) 10:25;28:9 <b>applied</b> (1) 37:20 <b>applies</b> (1) 41:24 <b>apply</b> (5) 5:17;18:15;22:12; 28:4;39:6 <b>appreciate</b> (1) 23:20 <b>approaching</b> (1) 13:10 <b>appropriate</b> (1) 28:14 <b>arbitrary</b> (1) 9:18 <b>argue</b> (1) 19:2 <b>argued</b> (2) 9:20;23:5 <b>argument</b> (12) 6:23;13:22;17:24; 19:10;29:4,7,13;32:9, 17;33:12;40:23;41:3 <b>arguments</b> (4) 20:5;31:16,17; 40:18 <b>arose</b> (1) 33:22 <b>around</b> (2)	<b>26:26;27:6</b> <b>Article</b> (40) 3:7;6:20;7:3,10; 8:11;9:11,18;10:2,22; 13:8,26;14:8,10,14; 15:9,21;16:7,25;17:2, 7,9,22,26;18:4,8,10, 19,22,22;19:3,17; 20:8,26;22:20;26:18; 32:12;37:25;40:3,7, 10 <b>articulated</b> (5) 5:13,16;24:2;27:23, 26 <b>aside</b> (1) 11:13 <b>Association</b> (5) 3:4;5:20,21;9:10; 12:20 <b>assuming</b> (1) 32:13 <b>attached</b> (1) 32:25 <b>attempt</b> (1) 22:21 <b>attorney</b> (3) 8:12,26;8,22 <b>authority</b> (6) 11:16,17,25;14:9; 16:8;40:3 <b>available</b> (9) 7:4;15:9;18:2,3,23, 25;25:26;40:4,7 <b>aware</b> (3) 3:14;7:13;41:19 <b>awhile</b> (1) 32:6	<b>28:25</b> <b>believes</b> (1) 25:5 <b>below</b> (1) 16:17 <b>Benevolent</b> (2) 3:3;12:20 <b>better</b> (1) 34:24 <b>beyond</b> (3) 15:8;29:16;40:3 <b>bifurcated</b> (1) 12:6 <b>Bill</b> (1) 3:4 <b>bind</b> (1) 22:3 <b>bit</b> (2) 9:25;27:6 <b>bite</b> (1) 27:7 <b>BLOOMBERG</b> (1) 5:20 <b>boarded</b> (1) 21:16 <b>body</b> (2) 6:26;11:5 <b>both</b> (5) 6:2;16:8;37:3,11,13 <b>bound</b> (1) 37:18 <b>bounds</b> (3) 14:12;18:5;35:23 <b>BOWE</b> (10) 4:16;6:24;7:16;8:3; 13:19;27:10,13,20; 28:17;39:18 <b>breach</b> (1) 16:13 <b>break</b> (2) 36:9;41:10 <b>breaking</b> (1) 19:26 <b>brief</b> (1) 5:8 <b>briefed</b> (2) 3:22;23:19 <b>briefing</b> (3) 10:25;21:4,5 <b>briefs</b> (1) 41:20 <b>bring</b> (8) 14:7;18:4,7;20:9; 22:10,11,13,19 <b>broad</b> (4) 4:2;5:25;36:15,17 <b>broader</b> (1) 4:8 <b>broadly</b> (1) 29:16 <b>brought</b> (3) 7:21;9:11;19:18 <b>building</b> (1)
----------	---	--	---	---

21:16	3:6	9:16;10:4,5;12:7,21	conducting (1)	35:2,19;36:7,16;37:2,
bunch (2)	challenged (1)	clarification (1)	9:14	3,7,14;40:20;41:4,8,9,
18:16,16	35:12	39:13	15	courtroom (1)
Buzz (2)	challenging (1)	clarify (1)	22:18;23:25;24:8,9,	31:9
7:14;19:6	40:11	20:20	9:29;21:32;16,21;	courts (7)
<b>C</b>	<b>chance (2)</b>	<b>class (3)</b>	<b>33:16;36:21,23,25,25;</b>	3:22;22:23;25:14;
	36:8,8	4:21,26;19:12	37:10,13	31:24;32:11;36:15;
	<b>change (1)</b>	<b>clear (10)</b>	<b>conflicting (1)</b>	39:14
	34:18	7:8;8:25;18:22,24;	39:8	<b>covered (1)</b>
<b>call (2)</b>	<b>changed (1)</b>	20:7;24:23;25:22;	<b>connection (1)</b>	25:15
30:17;34:19	35:21	28:18,21;30:10	9:15	<b>crafted (1)</b>
<b>called (1)</b>	<b>changes (1)</b>	<b>clearly (6)</b>	<b>consider (1)</b>	34:23
11:19	6:22	4:16;5:5;13:9;16:9;	41:7	<b>create (1)</b>
<b>cam (1)</b>	<b>characterization (2)</b>	28:14;34:14	<b>considered (5)</b>	12:16
6:26	7:9;14:26	<b>clients (2)</b>	22:2;23:25;24:8;	<b>created (4)</b>
<b>camera (2)</b>	<b>characterized (1)</b>	3:26;5:23	36:16,23	12:5;34:2;35:17;
11:5;25:25	14:23	<b>clock (1)</b>	<b>consistent (1)</b>	39:13
<b>can (8)</b>	<b>chooses (1)</b>	41:9	38:2	<b>criminal (7)</b>
8:11;19:22;22:6,23;	37:7	<b>close (1)</b>	15:2	6:10;21:8,22;26:5;
24:4;32:12;33:3;36:2	<b>chose (1)</b>	21:12	<b>contemplates (1)</b>	29:5,5,19
<b>Capacity (2)</b>	16:15	<b>closed (1)</b>	25:14	<b>cross (2)</b>
3:5;22:4	<b>circumstances (2)</b>	21:15	<b>contention (1)</b>	8:17;28:15
<b>Capital (2)</b>	26:15,16	<b>code (1)</b>	24:26	<b>cross-examination (3)</b>
29:22;37:7	<b>cite (5)</b>	16:21	<b>contents (1)</b>	26:8,23;41:21
<b>capricious (1)</b>	5:5;7:20;15:17;	<b>cognizable (5)</b>	33:22	<b>cross-examine (1)</b>
9:19	16:7;28:18	4:19,25;5:14;6:13;	<b>context (4)</b>	41:25
<b>caption (1)</b>	<b>cited (2)</b>	10:22	23:11;25:15;36:23;	<b>cross-motion (3)</b>
24:21	5:6;17:10	<b>Collective (1)</b>	37:12	8:19,21;11:15
<b>carefully (1)</b>	17:10	16:14	<b>CROW (1)</b>	40:17
34:23	<b>Citing (1)</b>	<b>combined (3)</b>	<b>currently (1)</b>	currently (1)
<b>Carpenter (6)</b>	16:23	17:2,8,9	31:24	31:24
7:23;15:18;16:8,23;	<b>City (74)</b>	<b>comment (2)</b>	<b>custodian (1)</b>	5:2
18:9,12	3:4,5,23;4:7,10,12,	23:3;36:19	<b>D</b>	<b>DA (2)</b>
<b>case (49)</b>	22:7:2,7;9:9,13;	<b>Commissioner (1)</b>	30:17;39:3	
3:3,13,16;5:19,20,	10:15;11:24;12:13,	33:7	<b>Daily (2)</b>	
22,23;6:7,26;7:23,23;	13,20,22,24;14:19;	<b>common (1)</b>	34:5;35:19	
9:6,8,10,16;11:19,21;	15:2,21;19:6,9,11,12,	21:8	<b>damages (7)</b>	
12:12,14,19;13:8,16;	26:20;3,5,23;22:4,5,	<b>compare (1)</b>	7:9,22;15:21;16:2,	
14:20;15:18,26;16:2,	12,15,20;23:2;24:4,4,	18:10	4;17:6;19:5	
10:19;9:20;22;21:26;	12,17,19,25;25:2,4;	<b>compel (3)</b>	<b>danced (1)</b>	
25:6;28:19;29:22,23;	27:7,16;28:21,24;	21:24;23:12;38:18	27:6	
30:19;31:8,11,23;	29:3,8;30:10,12,19,	<b>compelling (2)</b>	<b>day (1)</b>	
34:5,6,8,9;35:18,18,	26:31:2,3,5,23;32:8,	23:8;41:6	32:18	
19:38;16,17;39:18;	14,15;33:6,25;34:11;	<b>complaint (5)</b>	<b>deal (7)</b>	
40:14	35:25,26;37:16,17,21;	10:8;16:3,5;17:9,14	7:9,14:14;15:15;	
<b>cases (26)</b>	38:21,23;39:22,23,24,	<b>complete (4)</b>	16:17,24;20:15,16	
3:21;5:5,6,16;7:9,	25	17:24;19:23;37:22,	<b>dealing (2)</b>	
20:13;24;14:19;	<b>City- (1)</b>	26	7:18;26:14	
15:15;16:8,24;18:10;	40:2	<b>completely (4)</b>	<b>dealings (1)</b>	
19:16;23:9;24:25;	<b>City's (8)</b>	18:20;30:25;31:20,	33:17	
26:10;28:18,20;29:2;	4:6;8:12;15:10;	21	<b>deals (1)</b>	
31:20;35:22,24;	19:19;21:3,4;31:5,15	<b>complicated (1)</b>	26:12	
37:16;38:12,13;40:8	<b>Civil (14)</b>	8:10	<b>dealt (1)</b>	
<b>cause (6)</b>	4:21;8:25;10:20;	<b>comply (2)</b>	31:20	
12:10;16:22;17:12,	12:4,7;15:3;17:11;	20:3;39:24	<b>debate (2)</b>	
16,17,20	19:10;21:8,22;23:23;	<b>compulsively (1)</b>	6:12;10:11	
<b>certain (5)</b>	25:7;26:17;28:23	38:8	<b>DeBlasio (1)</b>	
7:14,17;12:17;	<b>claim (10)</b>	<b>concerned (1)</b>		
32:11;35:8	7:22;9:22;10:19,22;	12:17		
<b>Certainly (11)</b>	22:10,11,13,20;23:17;	<b>concerning (1)</b>		
3:11;6:15;9:5;	36:4	29:12		
13:11;20:19,22;24:6;	<b>claimed (5)</b>	<b>conduct (3)</b>		
35:18,23;36:15;38:20		16:13;21:3;22:12		
<b>cetera (1)</b>				

NYSCEF DOC PNov. 50

dEBLASIO

3:5	determined (1)	29:22	20:15	explicit (3)
decided (3)	10:21	Division (1)	entire (3)	15:24;18:6,14
11:7;21:11,12	determines (1)	16:17	21:16;31:2;37:25	explicitly (5)
decision (7)	25:21	documents (5)	entirely (1)	14:15;18:24;19:3;
9:18;11:10,12,14,	developments (1)	21:10;23:10,12;	18:19	32:11;40:6
16:12;19;28:11	7:12	28:6;38:7	entitled (5)	expressed (3)
declaratory (4)	difference (1)	DOE (5)	12:9;16:22;27:18;	12:5;33:5,6
9:12;17:3,4,8	27:20	9:8;10:3;13:8;	30:23;38:15	extends (1)
defendants (3)	different (5)	16:26,26	equitable (2)	29:16
6:10;21:8,23	7:16;14:24;15:12;	door (1)	17:4,6	extent (5)
defended (1)	17:6;18:19	35:2	essence (1)	10:13;17:15,19,19;
4:10	difficult (2)	down (1)	41:16	41:20
defending (1)	33:4,5	14:10	essentially (3)	<b>F</b>
4:6	directly (3)	drafted (1)	4:8;28:22;35:9	face (1)
defense (11)	28:13;32:8;33:3	38:6	established (1)	41:17
14:20,23,24,24;	disagree (1)	draw (4)	8:24	fact (14)
20:12;26:8,22;27:22,	26:19	11:7,8;13:20,21	estoppel (2)	5:19;6:8;7:17;
23,24;41:25	disagreed (4)	during (1)	37:16,19	15:17;24:20,25;
defenses (2)	10:15;13:22,23;	37:25	et (1)	25:12;28:6,24;31:18;
27:26;28:5	40:25	duties (1)	3:6	33:10;39:15;40:8;
defer (1)	disciplinary (4)	30:21	even (10)	41:6
23:21	9:15;26:4;29:11;	<b>E</b>	7:25;8:26;10:22;	facts (3)
defined (2)	34:24	echo (2)	11:13;13:7,8;26:18;	25:22;34:8;35:21
6:15;36:26	discipline (2)	25:8;33:9	event (2)	factual (1)
defining (1)	11:24;37:22	echoed (1)	8:18;13:12	13:6
36:24	disciplined (1)	12:12	everyone (2)	fails (1)
degrade (1)	3:19	echoing (1)	19:25;40:2	27:24
29:17	disclose (1)	13:5	evidence (1)	fairly (1)
democracy (1)	37:6	effect (1)	39:21	34:14
36:12	disclosure (1)	7:15	evolved (1)	familiar (1)
denied (5)	38:18	either (5)	35:18	34:5
8:19;12:25;13:2;	discretion (10)	12:5;14:15;30:6;	exact (4)	family (2)
25:4;27:8	3:16;6:4,5,5;20:24;	31:13;39:26	23:22;29:6,13;41:3	14:11,11
deny (1)	30:20;31:6;37:5;	embarrass (1)	exactly (3)	far (1)
39:9	40:13,15	29:17	6:14;40:22,23	24:19
Department (55)	discretionary (2)	emergency (1)	example (1)	Feed (2)
5:6;7:5,6;9:2,3,8,	3:15;5:25	10:24	7:20	7:14;19:6
14;10:3,21,24;11:17,	discuss (1)	employers (2)	exceeding (1)	<b>FEERICK (1)</b>
18,19,22,26;12:11,12,	23:20	38:10,10	14:8	40:9
14,18,19,25;13:4,8,	discussed (1)	employers' (1)	except (1)	few (1)
15,20,21;16:10;20:7;	28:7	38:11	7:19	21:7
21:26;22:19;26:11;	discussion (1)	end (1)	exception (9)	fight (1)
27:21;28:12,13;30:8;	24:15	26:26	18:23;34:2,2;36:2,	27:17
34:12,20;35:5,5,9,	disfavored (1)	enforce (5)	3:38;26;39:5,13,14	figure (2)
10,10,11;36:5,5,6;	27:21	15:4;19:13;21:20;	31:14	15:24;18:13
37:4,14;40:9,10,13,	dismiss (10)	25:10;28:24	exercise (1)	file (3)
14,25,25	8:15,17;11:16;	English (1)	3:16	13:11;14:10;21:9
departments (1)	13:16;27:8,8,17;28:2;	15:14	exercising (1)	filed (8)
13:4	32:9;40:21	enjoin (6)	15:8	10:4;13:25,26,26;
department's (1)	13:10;40:10	9:5,13;16:6;23:4,	exist (1)	14:2;16:3,5;37:24
40:12	dismissal (2)	17:35:7	24:25	final (1)
depends (1)	17:35:7	enjoined (6)	existed (1)	24:10
14:19	dismissed (8)	7:7;9:21;11:4,24;	10:5	Finally (3)
Dept (1)	6:26;10:3,9,13;	40:26,26	expanded (1)	31:5;38:3,25
28:19	17:14,18,21;23:18	enjoining (1)	35:21	find (2)
described (2)	9:6,7	12:24	expansive (1)	31:17,19
4:15;11:14	dispute (3)	enough (2)	22:14	fine (1)
description (1)	20:21;38:5,20	36:15,17	expedited (1)	7:15
37:13	disputed (1)	ensuring (1)	11:9	First (42)
details (1)	40:5	3:22	experience (1)	5:5;7:5,6;8:26;9:3;
37:6	disputes (1)	entered (1)	27:15	10:4,23;11:3,4,18,19,
determination (1)	21:13			
10:16	distinguish (1)			

22:26;12:11,12,14; 13:15,20,21;15:17,18; 16:10;20:7;21:26; 26:11;27:21;28:12, 15,18;30:8;34:20; 35:4,9;36:5,22;37:3, 14,19;40:8,9,14,25	21:21;25:19;38:6 glad (1) 32:2 goal (1) 33:26 goes (2) 17:22;29:16 government (15) 15:7;22:23,24;23:9, 13,14;36:13,14,17; 38:8;39:6,7,8,11,15 governmental (5) 19:17;22:3;37:20; 40:2,15 granted (8) 5:26;6:16;10:6; 12:8;16:20;20:13; 27:9;40:11 granting (1) 12:15 ground (1) 28:2 grounds (3) 4:7;23:18;39:10 guess (2) 32:7;36:7	35:14 hereby (1) 6:16 hesitate (1) 34:19 hey (1) 30:17 highly (1) 3:15 history (5) 26:6;31:19;35:23; 37:12;41:19 hold (1) 9:18 holding (2) 10:14;12:11 holdings (1) 8:25 holds (1) 35:9 Honor (12) 3:12;7:16;8:16; 13:16;15:19;20:19; 25:18;28:8,9;32:23; 34:13;41:17 Honor's (2) 33:20;36:19 humor (1) 12:2 Hybrid (3) 9:11;16:12,14	41:5 implied (1) 12:5 imply (2) 14:17;15:25 important (1) 6:7 importantly (2) 19:15;27:22 impose (2) 31:14;38:22 imposed (1) 20:13 imposing (1) 11:24 imposition (1) 22:15 improperly (1) 13:26 impune (2) 30:3,3 impunity (1) 19:23 inaccurate (1) 7:8 Inc (1) 3:4 include (2) 22:6;26:16 including (2) 28:5;37:3 inconsistent (2) 18:20;31:22 incorrect (1) 32:14 incredibly (2) 22:14,14 indeed (1) 39:13 Index (1) 3:6 indifferent (1) 39:22 infinite (1) 14:13 information (12) 3:24,25;20:24; 22:26;31:12;34:12, 12,25,25;36:12; 37:21;39:7 injunction (7) 9:21;10:26;11:11, 23:12;15;13:2;41:4 injunctive (5) 9:23;10:6;12:8; 16:19;17:11 inline (1) 5:24 ins (1) 20:26 inspection (2) 23:25;36:24 inspections (1)	24:7 instance (1) 28:15 instances (1) 12:23 integrity (1) 29:18 intended (3) 18:15;23:5,6 interest (11) 3:13,18,20,23;4:18; 5:4,15;6:11,14,14,15 interested (2) 3:13;25:19 interests (1) 39:8 interim (1) 11:3 internal (3) 12:23;22:21;39:3 interpret (1) 3:23 interpretation (1) 38:2 interpreted (2) 37:2;39:14 interpreting (1) 33:14 intervene (15) 3:8,16;4:4,13;5:15, 18,21,22;6:16;21:24; 38:12,14,19,23;39:23 intervened (1) 20:17 interveners (1) 4:17 intervention (4) 3:14;4:3;5:7;6:4 into (2) 6:22;36:13 investigation (1) 12:23 investigations (1) 29:11 involved (1) 23:2 involving (2) 3:21;26:4 issue (16) 7:2,2,16,19;8:8; 10:18;16:25;18:8; 20:11;21:2,21;23:24; 35:24;37:15,16;41:17 issued (4) 6:21;11:3,23;12:19 issues (2) 23:10;31:21 it/them (1) 24:5
focus (2) 20:25;41:21				
FOIL (14) 21:7,9;25:4,4; 33:23;24;34:3,3,9; 35:18,18,19,24;36:3				
follow (1) 19:9				
foot (1) 32:4				
footage (2) 7:7;11:5				
force (4) 19:9;20:3;24:4; 39:24				
forever (1) 31:24				
forgot (1) 6:14				
forth (2) 13:7;26:9				
forward (1) 30:6				
founded (1) 10:19				
Fourth (2) 8:26;13:4				
frankly (4) 13:2;24:25;25:4; 26:5				
frequent (1) 41:16				
full (1) 10:25				
fully (2) 3:22;10:26				
furthermore (1) 4:9				
future (1) 12:25				
<b>G</b>				
gallery (1) 6:9				
gave (1) 34:22				
Gazette (3) 29:8;34:5;35:19				
gears (1) 34:18				
gets (1) 19:25				
given (2) 4:2;30:19				
gives (3)				
<b>H</b>				
Hagler (7) 6:25;9:7;10:15; 13:14;33:6;40:24,24				
Hagler's (3) 11:11,13;28:11				
hand (1) 41:22				
happen (1) 6:21				
happy (1) 23:20				
harass (1) 29:17				
harassment (1) 41:21				
head (3) 8:8;24:26;26:12				
hear (2) 4:24;33:15				
heard (4) 5:9,11;25:20;41:5				
hearing (2) 9:17,18				
hearings (1) 9:14				
heart (1) 10:19				
held (7) 9:4;21:26;22:2;				
help (1) 20:20				
hence (1)				
<b>I</b>				
idea (4) 30:5;37:8,24,25				
identified (1) 34:24				
identify (1) 16:15				
identifying (2) 34:26;37:6				
If-if (1) 22:13				
ignore (1) 25:2				
ignored (1) 24:24				
illegal (2) 8:4;17:24				
illegally (2) 7:18;15:8				
illustrate (1) 35:22				
illustrative (1) 33:20				
immediately (1) 7:4				
impact (1) 23:14				
impeach (1) 29:18				
implicitly (1)				
<b>J</b>				
joined (1)				

38:15	41:25	25:5;31:8	means (5)	37:22
Judge (16)	<b>LAWYERS (3)</b>	litigation (11)	5:6;24:3;36:25;	narrow (1)
4:16;6:24;13:19,22;	5:20;16:15;41:17	4:18;24:21,23;	37:10;39:7	23:7
14:8,22;15:7;17:24;	leak (1)	25:16;26:17;27:19;	<b>mechanism (1)</b>	narrows (1)
19:25;20:14;25:23;	19:6	29:9,19;30:5;34:7,7	36:3	10:14
27:10,20;30:16;31:5;	leaked (4)	little (1)	mentioned (2)	nature (3)
39:18	7:17,21;8:3;15:20	9:25	27:5;32:2	10:14;28:5;34:26
judges (3)	learned (2)	<b>Longo (2)</b>	merits (4)	necessarily (1)
14:2;18:17;41:17	32:18,24	34:20;37:4	8:20;13:11;23:19;	33:24
<b>judgment (4)</b>	least (2)	look (1)	27:18	<b>necessary (3)</b>
9:12;17:3,4,8	6:4;26:24	26:6	met (1)	13:12,13;28:4
<b>judicial (3)</b>	leave (1)	looking (1)	28:8	need (7)
18:24;19:22;31:14	12:18	34:12	might (1)	5:14;6:13,14;30:5,
<b>jump (1)</b>	<b>Legal (32)</b>	looks (1)	29:17	6:22;39:3
33:8	3:8,12,20,26;4:3,5,	18:9	<b>mind (1)</b>	needs (2)
<b>juris (2)</b>	8,12;5:21;6:10,15;	lose (1)	32:8	31:13;33:6
15:14;35:22	8:21;10:7,7;12:8;	27:17	<b>mischaracterized (1)</b>	neutral (2)
<b>jurisdiction (3)</b>	16:20;20:18,20;21:4;	<b>lot (3)</b>	14:18	29:26;30:4
14:8,12;15:9	24:19;25:8;26:7,10;	5:17;6:8;40:18	<b>misconduct (2)</b>	Nevertheless (1)
<b>Justice (12)</b>	27:23,23,26;28:22;	<b>Lugano (1)</b>	3:20;12:23	11:13
6:25;9:6;10:14,24;	31:17;32:13;33:18;	30:8	<b>modifies (1)</b>	<b>New (18)</b>
11:7,11,13;13:14;	36:7;41:16	<b>M</b>	10:14	3:4,6,18;5:19;7:12;
28:11;33:5;40:23,24	<b>legally (6)</b>	<b>makes (8)</b>	12:13,14;13:25;15:2,	
<b>K</b>	4:18,25;5:14;6:13;	11:9;15:6;18:24;	18:19;11,12;25:7;	
<b>keep (1)</b>	10:21;15:6	20:25;28:26;30:9;	31:23;33:6,25;34:11;	
32:20	<b>Legislative (9)</b>	31:3,17	37:26	
<b>KELLY (1)</b>	26:6;31:13,19;32:3,	<b>making (3)</b>	<b>news (4)</b>	
40:17	4,5;35:23;37:12;	25:26;36:3;41:3	7:13;29:8,10,22	
<b>kept (3)</b>	41:19	<b>Malloy (1)</b>	<b>Newspapers (1)</b>	
22:18;36:20;37:10	<b>Legislator (1)</b>	28:19	37:7	
<b>KIEPPER (1)</b>	12:5	<b>mandamus (5)</b>	next (3)	
11:20	<b>Legislature (6)</b>	15:13;16:2,25;17:7;	15:26;25:21;29:4	
<b>K-I-E-P-P-E-R (1)</b>	18:15;21:10,18;	20:13	<b>nonsense (2)</b>	
11:20	23:5,6,16	<b>many (1)</b>	28:26;31:3	
<b>knowledge (1)</b>	<b>Leighton (10)</b>	35:11	<b>normal (1)</b>	
37:24	8:13,13,16;24:13,	<b>margins (1)</b>	27:19	
<b>knows (2)</b>	18:28;3:32;23;33:18;	35:20	<b>note (2)</b>	
34:13;40:2	34:17;35:4	<b>material (2)</b>	36:11;37:19	
<b>L</b>	<b>length (2)</b>	26:2;34:8	<b>noted (4)</b>	
<b>language (6)</b>	26:9;34:22	<b>materials (1)</b>	10:4;11:17;25:18;	
10:12;17:10;23:22;	<b>less (1)</b>	35:8	33:19	
36:14,16,20	41:9	<b>MATTER (10)</b>	<b>noting (1)</b>	
<b>large (1)</b>	<b>letter (1)</b>	5:19;6:4;8:17,23;	4:5	
26:6	41:17	9:8;12:13;13:3;22:2;	<b>Number (4)</b>	
<b>last (2)</b>	<b>license (2)</b>	27:24;29:7	3:6,21;14:13;29:24	
14:22;33:10	25:3,3	<b>matters (2)</b>	<b>O</b>	
<b>later (2)</b>	<b>liked (1)</b>	13:2;26:5	<b>objection (1)</b>	
9:26;20:16	33:10	<b>Maxwell (1)</b>	5:8	
<b>Latin (2)</b>	<b>likes (1)</b>	8:13	<b>obvious (3)</b>	
32:24,26	33:11	<b>may (11)</b>	13:23;16:16;18:11	
<b>law (22)</b>	<b>likewise (1)</b>	3:25;5:11;9:4,21;	<b>Obviously (3)</b>	
9:19,19;10:20;12:4,	13:16	20:20;22:24;25:14;	14:13;16:12;17:19	
7:19;9,13,14,20,26;	<b>limited (4)</b>	27:4;32:3;37:8;39:8	<b>odds (1)</b>	
20:2,11,22;22:2,11;	4:15;29:5;30:14,14	<b>maybe (1)</b>	37:11	
23:23;25:2;27:24;	<b>limits (1)</b>	8:26	<b>Off (1)</b>	
32:18,24;33:13;40:15	39:21	<b>Mayor (2)</b>	24:14	
<b>lawsuit (1)</b>	<b>litigants (3)</b>	3:5;33:7	<b>offered (1)</b>	
4:23	18:3;21:8,22	<b>mean (4)</b>	40:23	
<b>lawyer (1)</b>	<b>litigated (1)</b>	22:24;38:26;39:2,2	<b>officer (15)</b>	
	3:21	<b>meaning (1)</b>	11:25;15:5,20;23:2;	
	<b>litigating (2)</b>	17:19	25:12;26:5;28:23;	

29:18,24,25;30:3; 38:5,19;40:11;41:26 <b>officers</b> (19) 3:19,24;4:21;9:4; 10,11;12:7,13,16; 15:2;19:11;20:23; 21:23;29:12;38:7,13, 16,22;41:22 <b>officers'</b> (1) 29:2 <b>officer's</b> (4) 21:9;22:6;37:22,22 <b>officers's</b> (1) 28:20 <b>Official</b> (7) 3:5;22:4,23;30:16, 21,26;36:13 <b>off-the-record</b> (1) 24:15 <b>often</b> (1) 27:16 <b>once</b> (3) 16:2,5,10 <b>one</b> (20) 5:15,21;7:20;14:19, 21;15:15,25;16:15; 18:23;21:13;23:5; 24:19;26:25;27:20; 30:2,3;33:8;39:7; 40:4,4 <b>ongoing</b> (1) 8:5 <b>only</b> (15) 6:24;7:2,6;10:6; 12:8;15:2;16:20; 19:11;27:26;30:15, 20,25;37:23;40:20; 41:24 <b>onto</b> (1) 6:20 <b>open</b> (1) 21:12 <b>opened</b> (1) 35:2 <b>opportunity</b> (2) 25:19;34:22 <b>opposed</b> (1) 7:10 <b>opposing</b> (2) 10:11;34:21 <b>opposite</b> (1) 19:23 <b>opposition</b> (1) 4:15 <b>order</b> (4) 7:6;9:12;21:17; 40:25 <b>organization</b> (2) 29:9,10 <b>origin</b> (2) 26:7;33:19 <b>originated</b> (1) 26:9	otherwise (3) 36:25;40:6,20 <b>out</b> (9) 6:9;12:18;15:24; 18:14;24:18;26:15; 29:26;33:22;34:4 <b>outcome</b> (2) 5:4,22 <b>outcomes</b> (1) 34:24 <b>outs</b> (1) 20:26 <b>outset</b> (1) 25:18 <b>outside</b> (1) 25:15 <b>outsider</b> (1) 24:3 <b>over</b> (3) 20:21;27:15;35:18 <b>overstepping</b> (2) 14:11;18:5 <b>overzealous</b> (1) 26:8 <b>own</b> (1) 38:11	11:26;17;27:5;34:21; 36:4;37:15,24 <b>PBA's</b> (6) 4:9;11:10;21:15; 23:17;24:26;37:11 <b>pending</b> (4) 11:11;25:15;31:10; 34:6 <b>People</b> (9) 3:18;6:9;18:3; 20:15;26:24;30:10, 15,26;33:16 <b>perhaps</b> (4) 8:9;11:8;18:15; 33:20 <b>period</b> (3) 29:25;30:2;37:25 <b>permanent</b> (1) 20:13 <b>permanently</b> (1) 9:12 <b>permit</b> (1) 36:17 <b>permitted</b> (3) 3:24;4:3;5:22 <b>personal</b> (1) 29:20 <b>personnel</b> (2) 15:20;21:9 <b>petition</b> (14) 4:9;9:22;16:3,6,11, 11:17:9,18;21;20:6, 12,12;27:9;40:11 <b>petitioner</b> (6) 6:23;8:11;10:4; 12:26;16:21;36:8 <b>Petitioners</b> (3) 9:16;10:7;12:9 <b>petitioner's</b> (3) 10:8;17:14;33:9 <b>philosophical</b> (1) 41:16 <b>phrase</b> (3) 32:2,25;33:9 <b>Particularly</b> (2) 28:11,12 <b>parties</b> (4) 4:20;23:8,11;25:19 <b>party</b> (7) 3:13;5:9;6:16; 29:12;31:22;34:9; 38:18 <b>passed</b> (5) 21:5,7,18;23:7,16 <b>patently</b> (1) 7:8 <b>Patrolmen's</b> (1) 3:3 <b>Pausing</b> (1) 41:13 <b>PBA</b> (15) 9:20;12:21;21:23; 22:9,13,19;23:3;25:9,	35:11;40:11,12,12; 41:22,25 <b>policy</b> (1) 37:26 <b>portrayal</b> (1) 37:10 <b>pose</b> (1) 32:7 <b>position</b> (20) 3:9;4:12;7:21;8:22; 15:10;19:19;20:20; 21:15;24:2,24;28:22; 31:6,9,10,15;35:13; 37:11,17,18;41:2 <b>positions</b> (1) 4:6 <b>possesses</b> (1) 37:4 <b>possible</b> (1) 32:8 <b>postings</b> (1) 12:3 <b>potential</b> (1) 3:19 <b>potentially</b> (2) 25:15;30:3 <b>POUGHKEEPSIE</b> (6) 12:19,20,21,22; 16:5,23 <b>power</b> (1) 19:17 <b>practice</b> (2) 21:8;37:23 <b>precise</b> (6) 10:12;13:6,22; 31:21;34:8;35:26 <b>precisely</b> (4) 6:26;9:20;10:18; 22:4 <b>predicated</b> (1) 32:9 <b>Preliminarily</b> (1) 26:19 <b>preliminary</b> (6) 10:26;11:10,22; 12:15;13:2;20:14 <b>present</b> (2) 3:9;38:19 <b>press</b> (1) 37:13 <b>prevent</b> (4) 10:17;20:23;26:7; 35:7 <b>preventing</b> (1) 23:8 <b>prisoner</b> (1) 14:4 <b>prisoners</b> (1) 18:3 <b>private</b> (31) 7:3,9,22;8:9,10,24; 12:16;13:7;14:3,4,5,7, 9,15,17;15:11,16,22;	16:2,9,17,21,24;17:5; 18:18;19:5;23:8,11; 32:10;35:6;38:18 <b>probably</b> (3) 6:8;13:25;41:6 <b>problem</b> (2) 14:5;21:11 <b>procedural</b> (2) 20:26;28:3 <b>procedure</b> (2) 20:21;34:4 <b>Proceeding</b> (13) 3:7;6:20;14:10; 16:7;17:2;18:8;20:8, 9,9;21:24;25:16;26:4; 32:22 <b>proceedings</b> (7) 9:15;13:9,26;14:14; 18:4;34:24;38:15 <b>Proceedings-</b> (39) 3:1;4:1;5:1;6:1;7:1; 8:1;9:1;10:1;11:1; 12:1;13:1;14:1;15:1; 16:1;17:1;18:1;19:1; 20:1;21:1;22:1;23:1; 24:1;25:1;26:1;27:1; 28:1;29:1;30:1;31:1; 32:1;33:1;34:1;35:1; 36:1;37:1;38:1;39:1; 40:1;41:1 <b>process</b> (2) 25:14,18 <b>produce</b> (1) 21:24 <b>produced</b> (2) 33:25;38:8 <b>production</b> (3) 8:6;23:9,12 <b>profound</b> (1) 32:25 <b>prohibited</b> (2) 21:16;31:7 <b>prohibits</b> (1) 31:12 <b>prolong</b> (1) 20:10 <b>propose</b> (1) 25:10 <b>proposed</b> (2) 9:17;12:3 <b>proposes</b> (1) 4:10 <b>proposing</b> (1) 8:5 <b>prosecution</b> (3) 29:10,19;30:6 <b>protect</b> (4) 10:6,8;12:8;16:20 <b>protected</b> (6) 4:21;26;19:12; 23:10;25:5;28:7 <b>protection</b> (1) 15:3
---	--	---	--	---

protects (2) 19:13;28:23	rather (1) 36:3	Regardless (1) 12:3	requests (3) 21:22;25:4;39:9	10:20;12:4,7,9;15:3, 11:16;9:17;11:23:10, 23:28:23;29:2;30:11, 38:2,4,4,6
provide (2) 25:16;38:24	react (1) 16:9	regularly (1) 8:5	requirement (1) 5:14	risk (1) 24:10
provided (2) 11:15;36:12	read (5) 6:2;17:15;22:24; 24:3;32:5	rejected (3) 29:7;30:7,8	requires (1) 39:6	role (2) 5:2;8:5
provisions (2) 12:4;39:5	reading (1) 37:9	rejection (1) 4:9	reserved (1) 8:18	ruling (1) 24:11
prudence (2) 15:14;35:22	reaffirms (1) 39:15	related (1) 29:11	resist (2) 21:22;38:7	rulings (1) 35:21
psychology (1) 24:10	real (1) 21:2	relates (1) 29:5	resisting (1) 35:25	run (1) 26:26
public (4) 3:17;9:14;22:17,26	REALE (1) 11:19	release (19) 4:11;22:9;24;12:17; 16:6;23:15;24:4,4; 25:2;30:18;21;31:11, 26;32:16;34:10,12; 35:8,25,26	respect (2) 29:11;40:21	runs (1) 32:7
publication (2) 9:5,24	R-E-A-L-E (1) 11:20	released (5) 7:14;26;12:22; 22:17;26:22	respond (2) 24:12;28:17	S
publish (2) 22:5;35:15	Reale's (1) 17:10	releasing (6) 7:7;11:5;19:6; 20:24;31:7;40:26	respondent (4) 5:18;6:17;10:15; 31:22	SAFI (1) 40:9
publishing (2) 3:24;37:21	really (4) 12:26;33:26;35:3; 39:2	relevant (3) 3:25;6:24;26:2	respondents (4) 8:14;9:13;11:4; 13:11	same (4) 13:17;22:10;40:17; 41:3
purported (1) 7:26	reason (4) 10:8;16:15;31:3; 35:14	relief (19) 7:3;8:11;9:23;10:6; 12:8;10;16:19,22; 17:4,6,11,17,20;18:4, 23:19;16;20:14; 32:12;40:22	response (2) 20:5;33:23	saw (2) 21:10,11
purports (1) 3:7	reasons (3) 13:17,23;17:13	relief (19) 7:3;8:11;9:23;10:6; 12:8;10;16:19,22; 17:4,6,11,17,20;18:4, 23:19;16;20:14; 32:12;40:22	restrict (2) 22:7,21	saying (9) 9:24;13:5;14:11; 17:16;20:23;25:11; 30:24;33:12,12
purposes (2) 22:23;31:2	recall (1) 32:26	relevant (3) 3:25;6:24;26:2	restricted (2) 22:14;31:25	scenario (2) 13:6;14:13
pursuant (2) 9:17;17:2	Recess (1) 41:14	relief (19) 7:3;8:11;9:23;10:6; 12:8;10;16:19,22; 17:4,6,11,17,20;18:4, 23:19;16;20:14; 32:12;40:22	restriction (1) 37:5	scenarios (1) 14:3
put (5) 10:10;16:11;21:11; 30:24;41:20	recognized (3) 36:15,16;38:14	rely (1) 15:15	restrictions (1) 21:3	schedule (1) 10:25
putting (2) 5:8;11:13	recognizing (2) 34:3;41:5	relying (1) 24:6	result (1) 40:17	SCHEECTADY (3) 9:9,13;29:8
<b>Q</b>				
qualified (1) 5:7	record (6) 3:2;10;24:14,16; 39:12;41:15	remainder (1) 37:12	reversed (3) 11:22;12:15;40:10	school (2) 32:18,24
qualifies (1) 3:13	records (40) 4:10;22;5:2;7:14, 17,25,26;9:5;12:17; 15:20;19:7;21:25; 22:25;23:15,24;25:4, 15,23,25,26;26:21; 27:2;29:9,11,20;31:7; 32:15,20;33:17,25; 35:10,12,13;37:6; 38:11,18,21,24;39:9, 16	remarkable (1) 26:13	review (14) 7:8;15:12;18:25; 19:4,22;20:2;23:26; 24:7;25:14,24,25; 36:24;40:3,7	scope (1) 30:20
qualify (2) 4:16;5:9	recourse (1) 14:21	remedy (3) 15:4;32:19,21	reviewed (1) 39:20	Second (14) 8:26;9:3;12:18,18, 25:26;11:27;7:28:12; 33:8;35:5,10;36:5,19; 40:24
quick (2) 36:9,11	redacted (2) 34:16,17	reply (2) 24:17;28:20	Richter (3) 10:24;11:7;13:22	Section (26) 3:23;4:11;6:26;
Quite (1) 5:5	red-herring (1) 17:25	reports (1) 7:13	rifle (1) 21:10	12:4;15:5;20:26;21:2, 5,14,21;22:2,7,10,16; 23:11,14,24;30:9; 37:4;38:5,6,17;39:6, 10,17,24
quote (5) 11:26;17:2;25:22, 26:34;21	referred (1) 6:25	represent (1) 6:10	right (70) 4:19,25;6:6,13;7:3, 22:8;7,9,10,13,18,24; 10:4,7,7;12:6,16;13:7, 18,24;14:3,4,5,7,9,15, 17:15;16,22,24;16:2, 18,20,21,25;17:5,17, 26;18:14,15,18;19:5, 8,10,12,15;20:2,3,11; 21:22,23;25:12;	seek (6) 9:26;17:5,5,6;18:4; 19:3
quoting (1) 23:23	referring (1) 23:23	requested (1) 38:21	seeking (11) 4:22;5:17;9:12,23; 10:17,19;17:3,19; 19:16;34:9;36:4	seeks (1) 16:12
<b>R</b>				
raised (6) 14:20;15:20;20:5, 12;37:15;40:19	reflected (1) 6:8	requester (1) 25:22	rights (21) 4:20,21;7:10;8:25;	
raises (1) 7:2	regarding (1) 36:20	requesting (1) 4:13		

seems (3) 25:13;26:21;27:18	someone (4) 5:17;7:21;19:22; 38:20	stayed (2) 7:6;40:25	20:8,9;29:20 Supreme (1) 14:12	11:14 Transit (1) 11:25
sense (6) 5:17;15:6;20:25; 22:9,10;23:21	somewhat (1) 24:26	steps (1) 18:16	sure (2) 27:5;34:21	translated (1) 32:26
sentence (1) 14:5	Sorry (1) 33:13	stick (2) 35:3,4	system (1) 36:13	transparency (2) 33:26;36:13
separate (1) 14:16	sort (2) 27:6;37:15	still (1) 27:17		tremendous (1) 3:17
set (5) 10:25;13:7;26:9,15; 34:4	sorts (3) 14:2;18:3;19:16	stop (3) 17:21;21:11;33:17	T	trial (1) 11:23
shall (7) 22:18;23:24;24:8; 36:20,23;37:10;39:6	sought (5) 12:24;16:2,3;38:18, 19	stopped (1) 37:23	talk (1) 9:25	trials (2) 29:5,6
share (2) 30:11,12	speak (3) 8:20,22;20:18	strict (1) 5:14	talking (1) 18:26	TRO (3) 6:21;11:10;28:8
SHARTSIS (6) 3:11;5:11,13;6:18; 20:19;36:11	specific (6) 21:5;35:17,17; 36:20;37:9;39:4	stuff (2) 7:21;30:18	talks (1) 17:8	true (1) 30:24
shielded (1) 9:6	specifically (2) 11:24;22:16	subject (9) 4:11,23;23:25;24:6; 31:8;34:14,25;35:14; 36:24	ten-minute (1) 41:10	trust (2) 14:23;33:11
shift (1) 37:26	spent (1) 37:21	submitted (1) 10:26	tens (1) 13:24	trying (2) 18:13;23:12
shooting (1) 23:2	spirit (1) 41:18	Subparagraph (1) 39:16	terms (1) 7:17	turns (1) 24:26
show (3) 30:20,26;31:2	sprang (1) 26:13	subset (4) 30:10,12,14,15	theoretically (1) 23:3	two (3) 9:10;24:18;37:23
showing (1) 25:22	stage (1) 11:7	substance (1) 40:19	therefore (8) 7:3;9:26;12:9,24; 19:4;32:11;37:17; 40:7	two-word (1) 33:11
sic (1) 40:17	stand (1) 31:16	substantial (1) 3:12	Third (14) 8:26;9:3,8;10:3,21; 11:17;13:8;25:25; 26:11;28:12,13;35:5, 10:36:5	type (1) 32:21
significant (2) 5:23;39:12	standalone (1) 25:14	substantially (1) 13:17	U	ultimately (1) 3:26
similar (2) 5:20;29:23	standard (12) 4:2;5:11,13,16,25; 6:13;18:22;19:24,25;	substantive (1) 6:23	un-confidential (1) 33:17	
similarly (1) 9:7	40:4,5,5	substantively (1) 4:10	under (31) 4:21,26;7:18,22; 10:22;12:10;13:7,8;	14:16,16,26;16:22,25;
simple (1) 18:20	standards (1) 3:14	successor (1) 17:7	17:12,17,20;19:17; 21:20;22:10,11;	
simply (6) 4:25;21:2;22:7; 23:4;30:7;39:5	standing (3) 21:19,20;22:9	sue (2) 8:24;9:4	25:12,21;31:25; 32:10;34:3,8;36:12;	
Simpson (5) 15:26;16:8,23; 18:10,12	state (3) 21:21,24;34:14	sued (1) 15:20	37:4,8;38:17;40:12	
single (3) 28:2;29:23;38:16	stated (1) 10:5	sufficient (1) 25:23	underlying (1) 26:4	
sit (1) 17:23	statement (2) 18:6;34:20	suggesting (1) 25:13	Understood (2) 32:23;36:22	
sitting (1) 24:20	Statute (42)	suggests (1) 38:16	undisputed (1) 21:4	
situation (2) 15:19;33:4	4:22;12:10;14:16; 16:23;17:12,18,20;	suing (1) 19:6	unequivocally (3) 18:24;19:3;40:6	
small (1) 39:3	18:7,23;19:2,21,21, 26:20;4:21;18:22;22;	summaries (12) 8:6,22;9:25,25; 16:6;22:5;32:17;	unfettered (2) 40:13,15	
Society (5) 3:8,12;8:21;24:20; 33:18	23:7,15,16;25:21; 26:15,17,25;28:6,23,	34:15,18,19,20,23	uniform (1) 20:22	
solution (4) 31:13;32:3,4,5	26:29;15,15;31:4,12, 18,18;32:13;33:5,15,	summarized (1) 6:2	Union (1) 25:7	
somehow (2) 7:17;10:13	19:35;17,24;40:5; 41:18,19,22	summary (3) 12:22;20:8;22:7	unions (1) 9:4	
	statutory (1) 15:3	support (3) 7:20;31:17,19	traffic (1) 22:11	
	stay (4) 10:24;11:3;13:20, 21	suppose (1) 28:9	unique (2) 26:14,15	
		supposed (3)	transcript (1)	

unless (5) 19:21,26;33:25,26; 40:5	weaponized (1) 26:17	9:9 <b>153231/2008 (1)</b>	7
unnecessary (1) 30:25	whatsoever (1) 15:4	3:6 <b>184 (1)</b>	
unprecedented (1) 37:26	Whereupon (1) 24:15	12:21 <b>1992 (1)</b>	11:20 <b>75 (1)</b>
up (7) 21:16;25:6;27:16; 30:17;38:13;39:19; 41:3	whole (3) 6:7;18:16,16	12:21 <b>1994 (2)</b>	13:25 <b>78 (41)</b>
upon (2) 17:12,17	whomever (1) 30:12	11:21;12:11 <b>1st (1)</b>	3:7;6:20;7:3,10; 8:11;9:11,18;10:2,20, 22;13:8,26;14:8,10, 14;15:9,21;16:7,25; 17:2,7,9,22,26;18:4,8, 10,19,22,23;19:3,17; 20:8,26;22:20;26:18; 32:12;37:25;40:3,7, 10
use (7) 22:22,23;26:17,22, 23:27:2,3	window (3) 21:12,13,15	28:19	
used (1) 36:2	wish (1) 35:14	<b>2</b>	
<b>V</b>			
vagally (1) 7:13	wishes (2) 23:21;35:26	<b>2006 (1)</b> 12:13	
vehicle (2) 10:20,22	withdraw (1) 12:24	<b>2008 (1)</b> 28:19	
VERSUS (6) 9:8;11:19,20;12:13, 20;29:8	within (3) 9:22;30:20;37:5	<b>2011 (1)</b> 9:9	
view (6) 18:21;20:22;27:7; 28:10,13;33:24	without (4) 13:10;21:17;37:6; 39:16	<b>204 (1)</b> 11:20	
violate (4) 9:17;12:4;19:20; 28:25	word (2) 9:21;16:21	<b>212 (1)</b> 40:9	
violates (2) 9:26;16:13	words (2) 10:10,12	<b>297 (1)</b> 40:9	
violating (2) 39:16,25	work (1) 30:2	<b>3</b>	
violation (3) 8:25;9:19;15:5	working (2) 29:26;30:19	<b>34 (1)</b> 12:14	
violations (2) 10:5;12:7	workings (1) 36:12	<b>35 (1)</b> 12:13	
<b>W</b>		world (1) 31:2	
waive (2) 28:21,25	worn (1) 11:5	<b>392 (1)</b> 12:14	
waived (1) 29:3	worth (1) 4:5	<b>4</b>	
walked (1) 35:2	written (2) 14:9;29:15	<b>4 (2)</b> 30:9;39:16	
wants (10) 22:5,24;23:14;31:3; 32:14;36:18;39:12, 16;40:14;41:25	wrong (2) 15:6;40:14	<b>4:03 (1)</b> 41:10	
warrant (1) 25:23		<b>40 (1)</b> 37:21	
way (8) 5:15;15:18;16:15; 25:6;30:3;37:8;38:6; 39:21	<b>Y</b>		
ways (1) 35:11	years (7) 13:25;21:7;27:15; 34:3;35:18;37:21,23	<b>5</b>	
<b>Z</b>		<b>50 (5)</b> 4:26;6:26;22:2; 31:25;38:6	
<b>1</b>		<b>501 (1)</b> 12:21	
<b>1455 (1)</b>		<b>50A (45)</b> 3:23;4:11;9:6,17, 20,26;10:5,20;12:4,7, 15;15:5;20:26;21:2,5, 14,21;22:7,10,16; 23:11,14,24;24:24; 25:5,12,13,16;26:7, 12;28:7;30:9;31:8; 32:10;34:3,14;35:14; 36:2;37:4;38:5,17; 39:10,24,25;40:12	